

INTERVIEW

David Friedman

David Friedman is one of the leading figures in the law and economics movement, that group of scholars who use economic analysis to better understand legal systems and to consider reforms that may lead to more efficient outcomes. Unlike many in this field, Friedman's formal training is neither in law nor economics. Rather, he holds a Ph.D. in physics from the University of Chicago.

Friedman's first full-time academic appointment was at Virginia Polytechnic Institute and State University. At VPI, he was colleagues with James Buchanan, Gordon Tullock, and other members of the "public choice" school, who employ economics to analyze political decisions and institutions. By that time, Friedman had published his first book, *The Machinery of Freedom*, in which he made the case that a society without a state could effectively handle such classic "public goods" as police, courts, and national defense. His "anarcho-capitalism" distinguished him from his father, Milton Friedman, who, while an eloquent spokesperson for a market system, believed that some goods could not be produced privately and argued instead for a minimal state.

David Friedman currently teaches at Santa Clara University. In addition to his academic work, he has recently written two novels, *Harald* and *Salamander*, which consider many important economic, legal, and philosophical issues. He is also the author of *Hidden Order: The Economics of Everyday Life*, published in 1996, one of the first of several relatively recent books to explain economic reasoning and policy in nontechnical language for a popular audience. Many of Friedman's papers and books are available on his personal Web site: www.daviddfriedman.com. Aaron Steelman interviewed Friedman in April 2010.

RF: Your formal academic training was in the physical sciences. How did you become interested in economics? And what was your path toward an academic career in economics?

Friedman: While I was working on my doctorate in physics I was also writing columns on political and economic topics as the token libertarian columnist for *The New Guard*, a conservative student magazine. While a post-doc in physics at Columbia, I did a piece on population economics for the Population Council as well as writing and publishing



The Machinery of Freedom. I concluded that I was a better economist than physicist — had better intuition for the field.

Julius Margolis, who ran the Fels Center for State and Local Government at the University of Pennsylvania, saw some of my work and offered me a post-doctoral position at his center as an opportunity to switch fields. I accepted, spent two years as a post-doc and one as a lecturer, and wrote my piece on an economic theory of the size and shape of nations, which was eventually published in the *Journal of Political Economy*.

At some point I met James Buchanan and found that we had similar ideas about the application of economics to understanding political institutions. Buchanan was the dominant figure in the economics department at VPI. He arranged for me to be hired there as an assistant professor. He also, I think deliberately, arranged for me to be assigned to teach quite a large part of the total syllabus over the course of the next few years, thus filling in some of the gaps in my economic education; teaching is a good way of learning.

RF: In your first book, *The Machinery of Freedom*, you make the case for a polycentric legal system. How would such a society overcome classic public goods problems, such as courts and, perhaps an even more difficult issue, national defense?

Friedman: Courts don't produce a public good, since they can choose not to settle disputes between people who have not paid them for the service. In the book, I describe how rights protection and the resolution of disputes could be produced as private goods.

National defense, on the other hand, is a public good, and perhaps the most serious problem for the sort of society

I described. There are, however, a variety of ways in which public goods are (imperfectly) privately produced — consider radio broadcasts, or the public good of encouraging taxi drivers to do a good job by tipping them, or the production of open source software such as Linux, or the public good of painting my house and so benefitting my neighbors. Imperfect production means that a public good may be worth more than it costs but still not get produced. Whether that will happen with the public good of national defense depends on a variety of things, including how much an adequate defense costs. I was more pessimistic about doing it when the United States was facing a hostile power with a thermonuclear arsenal than I am now. A discussion of some of the imperfect ways in which it might be possible to produce an adequate amount of this particular public good would take more space than I'm inclined to give it here.

RF: In *The Machinery of Freedom*, you also make the case for reforming the way students pay for their university educations. Could you explain that proposal — and do you think it could gain support in a world where tuition and associated costs seem to be rising considerably more rapidly than inflation?

Friedman: I proposed something along the lines advocated by Adam Smith — a university where professors were paid directly by students. This would involve disaggregating the variety of services that current universities perform. There is no strong reason why the same institution should be running hotels (called dormitories), restaurants (dining halls), producing schooling, testing and certifying.

I think something along the lines I described may happen online, where some of the difficulties of doing it in real space disappear — no need to have everyone housed in the same area, for instance. The main requirement is some form of certification, or substitute for certification, that lets a student learn a subject from whomever he wants and then get his learning certified by a credible testing agency. I find it hard to believe that the actual education part of what current colleges produce could cost as much as half of what they now charge.

RF: You also have written about monetary policy. In your opinion, what would be the most desirable way to construct a monetary system?

Friedman: What I proposed was a system of competing fractional reserve banks, each guaranteeing its currency with a commodity bundle. If you bring me a million Friedman dollars, I agree to give you in return a bundle of commodities: 500 pounds of grade X steel, 200 bushels of grade B wheat, four ounces of gold, etc. Familiar mechanisms will result in a price level, measured in my dollars, at which the total value of the bundle is just a million.

The most important argument for that system is that competing private money issuers have the right incentives.

Their profit-maximizing strategy generates stable money, since if their money is not stable, people will choose not to use it, depriving them of the seignorage — probably in the form of interest — that is their source of income. That is not true for a government monopoly money. The advantage of a commodity bundle over a single commodity is that it is less subject to unpredictable fluctuations in value due to changes in demand for or supply of individual commodities. Readers interested in a more detailed account can find an article I wrote for the Cato Institute titled “Gold, Paper, or ... Is There a Better Money” on Cato’s Web site.

RF: The law and economics movement has made considerable inroads in law schools and academia generally over the past 30 years. What do you think are the big remaining questions that law and economics scholars ought to address?

Friedman: One of them is how to include legislators, judges, and enforcers in the theory. In a consistent version of the economic analysis of law, they have to be treated as rational self-interested actors, just like criminals, victims, tortfeasors, and everyone else.

Another problem that has not been adequately dealt with, at least in anything I have seen, is the effect on optimal enforcement theory of differences in offenders, most obviously the fact that different offenders face different probabilities of apprehension.

A final big question is the technology of judging — what courts can do how well. If you assume a perfectly wise court system, efficient law is easy — just severely punish anyone who takes any inefficient action. If courts have no ability at all to detect truth, on the other hand, they are of very little use. Where between those points actual courts are, what sorts of questions they can or cannot get reasonably correct answers to, is a major element in figuring out what the law should be.

RF: This is an intentionally broad question to which I would like to get your reaction: How close does the American common law come to approximating an efficient legal system? Where does it go right? Where does it go wrong?

Friedman: I discuss that at some length in *Law’s Order*, in the context of evidence for and against the Posner conjecture. My favorite example of inefficiency is that in the common law of tort the value of life is zero, since if you tortiously kill someone, his claim against you dies with him. That cannot be the right answer.

In many other cases, one can make arguments for either of two different legal rules, sometimes more than two. It’s tempting to observe what legal rule exists and then produce the argument to show that it’s efficient — but if there were a different rule you could produce an argument for it instead. My own view is that there are elements of effi-

ciency in Anglo-American common law, but that a good deal of it does not fit that pattern.

RF: How would you suggest we think about the trade-offs associated with our current intellectual property regime? Does the system go too far in protecting the rights of creators? If so, how far and what would be a more desirable scheme?

Friedman: The immediate issue is not how far the rights of creators should be protected but how far they can be. As more and more intellectual property takes digital form, easily reproduced and distributed, and more and more people have access to fast Internet connections, it becomes increasingly difficult to enforce laws giving creators control over the intellectual property they create. At some point, the sensible response is to abandon the attempt and shift to other mechanisms for rewarding creators.

One of the subthemes of *Future Imperfect*, my most recent nonfiction book, is that the proper response to technological change is not to ask how we can keep doing what we are doing that has become harder to do — enforce copyright law, for instance. It is rather to ask how we can best achieve our objectives under the new circumstances. Sometimes that means abandoning the approach that has become unworkable, and shifting to a different approach that the new technology makes more workable than before.

RF: Many people seem to believe that less crime is always more desirable, by definition. Could you briefly explain your theory of the efficient level of crime and what the policy implications of that theory might be?

Friedman: The optimal level of traffic accidents would be zero if we could eliminate them without giving up anything else we value. But the obvious way of eliminating all traffic accidents is to stop driving, and few of us consider that a net improvement.

If law enforcement were costless, we would still not want to eliminate all illegal acts; consider the driver who is breaking the speed limit on his way to the hospital with his wife in the back seat going into labor, or Posner's example of the hunter lost and starving who comes across a locked cabin containing canned food and a telephone. Some such "efficient offenses" can be permitted by modifying the law to make them legal — for instance under the doctrine of necessity. In other cases the facts that make the offense efficient cannot readily be demonstrated to an outside party such as a court, so the best solution may be to set a penalty reflecting the damage done by the offense and then let the potential offender decide whether it is a price worth paying. The result would be a level of offenses above zero.

In the real world, law enforcement is not costless. Once one allows for that, it may be desirable to set levels of enforcement at which some inefficient offenses — offenses that harm their victims by more than they benefit the

offender — occur because preventing them costs more than it is worth. Less obviously, it may be desirable to deter some efficient crimes, because deterring them saves us the cost of punishing them. For details see my *Law's Order*.

RF: You have written a fair amount about the economics of population growth. As you note in *Law's Order*, there seems to be a fairly widespread notion that "babies are a bad thing." How would you address that concern?

Friedman: Babies don't arrive with a deed to a per-capita share of the world's resources clutched in their fists; if they want land to build on or gasoline to drive with they will have to give those who own those resources something in exchange worth at least as much. So to first approximation, adding another person to the world's population makes existing people better off, not worse off. It's worth noting that there is very little relation between how rich a country is in resources per capita and how rich its population is; the most important productive resource isn't land or oil but people.

Of course, people sometimes produce negative externalities. But they also produce positive externalities. There is no general reason to expect the negative effects to be larger than the positive; when I tried to estimate both long ago (in the article "Laissez-Faire in Population: The Least Bad Solution," which is available on my personal Web site) I concluded that I could not tell whether the sum was positive or negative.

RF: Much of the recent debate regarding medical care legislation seemed to be predicated on the idea that medical care should not be treated like other goods and services. How would you respond?

Friedman: There are strongly felt emotional attitudes toward medical care that do not exist for many other goods and services and that makes it more difficult to treat it as an ordinary commodity. But I think it is hard to offer rational reasons in support of those attitudes, or good economic arguments against having it produced on the free market like food or housing. For details, see my article "Should Medical Care Be a Commodity?" available on my personal Web site.

RF: What do you think of "behavioral economics"? And what does law and economics have to contribute to it?

Friedman: The observation that humans are not perfectly rational is neither novel nor, I think, very useful. The point at which it becomes interesting is when one can create a theory of how and why they are irrational, and hence just how the choices they make will differ from the choices that conventional economics predict that they will make. I have an article that attempts to do that, based on evolutionary psychology; it's titled "Economics and Evolutionary

Psychology” and is available on my personal Web site.

RF: Since you wrote *Hidden Order*, several other popular economics books have been published by commercial houses, some to great fanfare and success. To what do you attribute the demand for and popularity of such books?

Friedman: Part of it is that people want to understand economics, part is that economics is inherently interesting.

RF: What issues are you working on currently?

Friedman: My next nonfiction book will probably be based on a seminar I have taught for some years under the title of “Legal Systems Very Different from Ours.” It will describe a considerable range of legal systems, including those of modern gypsies, imperial China, ancient Athens, the Cheyenne Indians, Jewish law, and other arrangements, and attempt to identify common threads that run through many or all legal systems, and look at the different ways in which different societies have dealt with their common legal problems.

RF: Please tell us about your recent novels. What do you think science fiction and fantasy can teach us about economics and alternative legal systems? And why are those types of fiction particularly good forums for discussing such issues?

Friedman: I’ve published one novel — marketed as a fantasy, but more nearly a historical novel with made-up history. A second, *Salamander*, is finished and webbed, but has not yet found a publisher; that one is a real fantasy, complete with my own, I think original, version of magic. I’m currently working on a sequel to it.

The published novel, *Harald* (from Baen Books), is a story not a treatise, but it contains a good deal of implicit economics and political philosophy. One implied message is that political structures are about relations between persons, not formal tables of organization; the mess my protagonist has to deal with in the early part of the book grows out of the acts of a young and inexperienced king who thinks people can be trusted if and only if they are in allegiance to him, and so tries to convert, by force, allies into subjects.

The economics is mostly about the implications for the project of raising and using armies of the fact that soldiers don’t want to be killed. My protagonist is a military leader from a semi-stateless society, faced with the problem of

David Friedman

► Present Position

Professor of Law, Santa Clara University

► Previous Faculty Appointment

University of Chicago (faculty fellow), Tulane University, University of California at Los Angeles, and Virginia Polytechnic Institute and State University

► Education

B.A., Harvard University (1965); M.S., University of Chicago (1967); Ph.D., University of Chicago (1971)

► Selected Publications

Future Imperfect: Technology and Freedom in an Uncertain World (2008); *Law’s Order: What Economics Has to Do with Law and Why It Matters* (2000); *Hidden Order: The Economics of Everyday Life* (1996); *The Machinery of Freedom* (1973); author of numerous papers in such journals as the *American Economic Review*, *Journal of Political Economy*, *Journal of Law & Economics*, and *Journal of Legal Studies*

raising and supporting an army without taxes, a draft, or feudal obligations. One consequence is that he is very sparing with the lives of his troops, since if fighting for him turns out to be too dangerous he won’t have many volunteers next time. Another is that he is reasonably sparing with the lives of his enemies, since if he forces them to surrender instead of killing them he can ransom them back to the Empire, the antagonist he is fighting, for the money he will need for his next campaign. A lot of the military strategy ends up being aimed at putting the opponent in a position where, if he doesn’t surrender, or at least withdraw, his army will run out of food or water. One of the two people the book is dedicated to is the author of a fascinating book on the logistics of the army of Alexander the Great.

Salamander started out as an exploration, in a fantasy context, of the central planning fallacy, the idea that if only all of a society’s resources were under someone’s intelligent control, wonderful things could be done with them. The equivalent, in a society where magic exists but is weak, is a procedure that lets one wizard take control of the magical power of many others. The inventor is a brilliant but naive academic type who intends only good. Like his equivalents in the real world, he misses both the fact that those resources are already being used by their owners for their own ends and the risk that the power will be used for other than benevolent purposes. My other protagonist points out the first problem to him early on, and his colleague and collaborator forcibly demonstrates the second by seizing control of the process during the first full scale experiment with it. As the book developed, it turned out to have at least one other theme — in what sense the ends do or do not justify the means. Interested readers can find *Harald* online at <http://www.webscription.net/p-196-harald.aspx> and *Salamander* on my personal Web site.

RF: Which economists have influenced you the most?

Friedman: Other than my father, probably Alfred Marshall, perhaps David Ricardo. I got one idea that has been important to me from Thomas Schelling, another from Earl Thompson, and also some interesting ideas from Robert Frank. I am in some sense a follower of Gary Becker in economic imperialism, Buchanan and Tullock in public choice theory, Posner in economic analysis of law, but I’m reluctant to call that an influence, since it is more a matter of doing the same sorts of things that those people did first. **RF**